

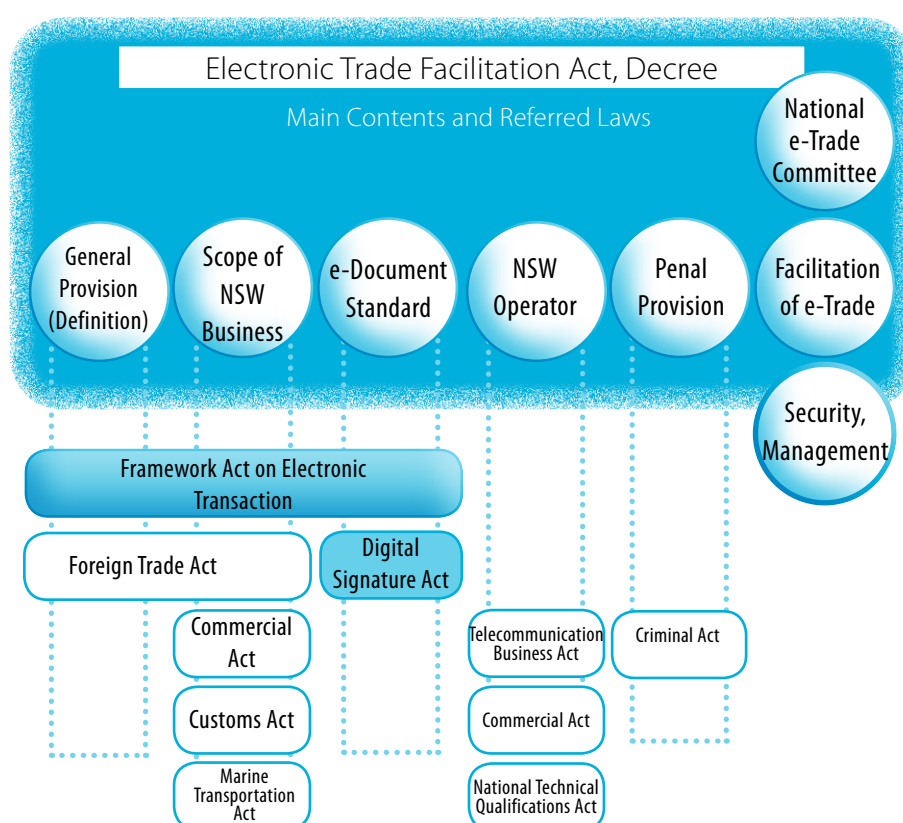
A. Mini-Case Study I: The Legal Framework of the Republic of Korea National Single Window

a. Background and History of the Legal Framework

The Republic of Korea enacted the Act on the Promotion of Office Automation for Trade in December 1991 to enhance the competitiveness of the trade industry by promoting office automation for trade, introducing paperless trade services, and facilitating the use of electronic documents for trade business. As a result, EDI-based paperless trade systems were successfully developed and adopted in many trade-related agencies as well as by private trade service providers such as banks and insurance companies. The systems aimed at automating administrative processes resulting in making these processes more transparent and more efficient.

As new ICT technologies were introduced, such as web-based applications and digital signatures, the Republic of Korea enacted the Digital Signature Act and the Framework Act on Electronic Transaction in July 1999. These laws established the basic framework necessary to clarify the legal relations between parties involved in an electronic transaction, to secure the safety and reliability of electronic transactions (data messages) and to promote and stimulate the use of electronic records and communications on a national level for advancing social benefit and convenience. The Framework Act on Electronic Transaction was wholly amended in 2002 to further promote e-transactions and clarify legal relationship between parties. It also addressed customer protection and privacy issues in more detail.

Figure III.1. Overview of the legal framework for Single Window in the Republic of Korea



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In December 2005, in response to the global trend encouraging the establishment of national SWs and to the rapid change of ICT environment, the Republic of Korea enacted the Electronic Trade Facilitation Act. This new Act wholly revised the Act on the Promotion of Office Automation for Trade and referred to the Framework Act on Electronic Transactions and Electronic Signature Act to address issues related to the life-cycle of e-documents and the need for an e-document depository. Figure III.1 shows how the Electronic Trade Facilitation Act builds upon and relates to other laws in the country.

b. Functions of The Three Main Single Window-related Laws

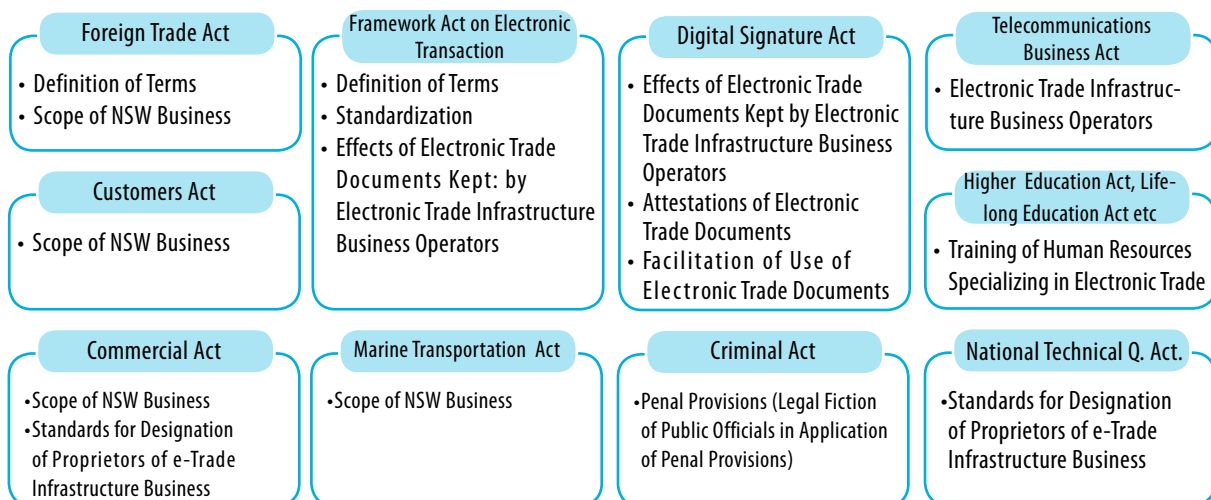
The Electronic Trade Facilitation Act (1991, wholly amended 2005): This act enables the development and operation of the national electronic trade system in the Republic of Korea. It provides for the following:

- Facilitation of e-Trade including international cooperation, statistics, arbitration, financial resources
- Establishment of a National Electronic Trade Committee

- Security and management of electronic trade documents and trade information
- Facilitation of development of electronic trade techniques and training of human resources specializing in electronic trade
- Electronic trade infrastructure (National Single Window) business operators
- Scope of SW Business, Standardization of Electronic Trade Documents
- Keeping and attestations of electronic trade documents (legal effects of electronic trade documents kept by electronic trade infrastructure business operators)
- Facilitation of the use of electronic trade documents
- Penal provisions on wrongful acts related to e-trade

While this Act built upon relevant legislation, such as the Framework Act on Electronic Transaction and the Digital Signature Act, it also led to revisions and amendments to a number of other laws, such as the Customs Act (discussed in section c. below). Figure III.2 provides an overview of the content of various laws related to the e-Trade Facilitation Act.

Figure III.2. Other Acts and provisions related to the E-Trade Facilitation Act



Note: NSW stands for national single window

The Framework Act on e-Transaction (1999, wholly amended 2002):

This Act provides the legal basis for all electronic transactions in the Republic of Korea, including (but not limited to) international trade transactions. It provides for the following:

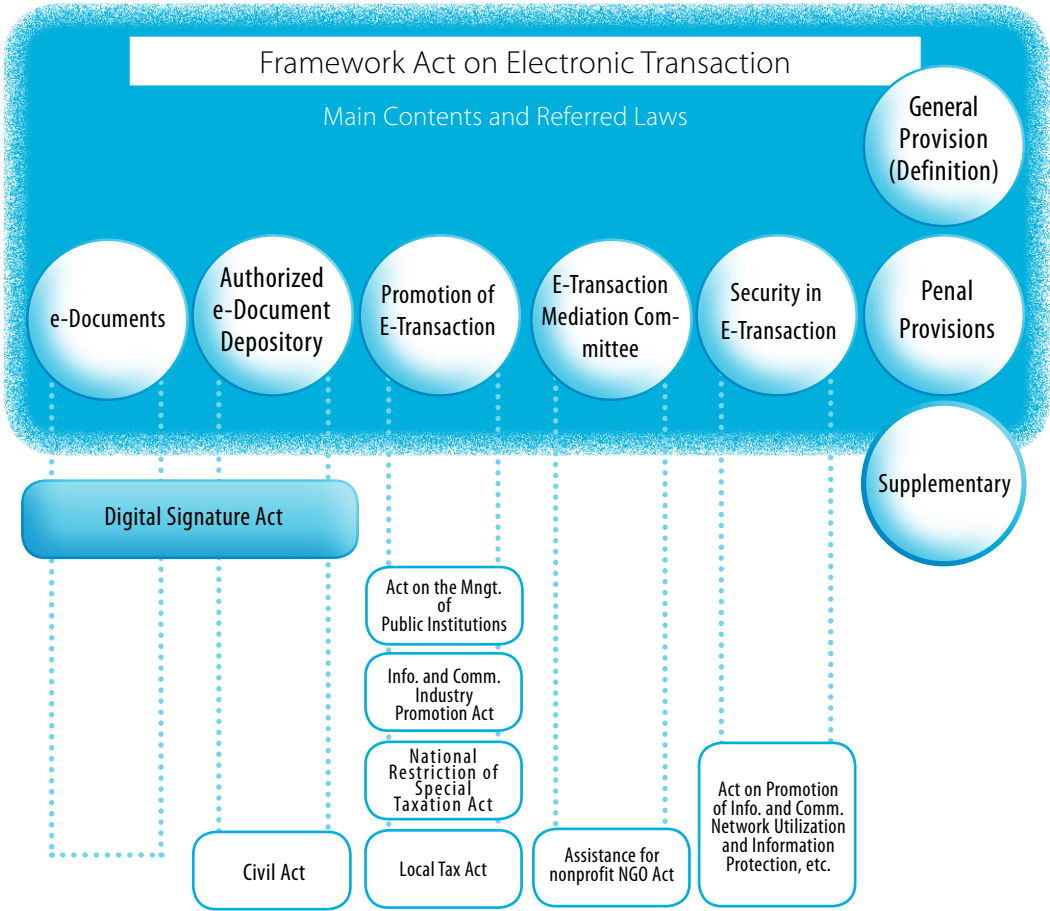
- The definition of electronic documents (validity; custody; time and place of transmission or receipt of e-documents; independency of e-document received; acknowledgement of receipt) and electronic transaction
- Security measures in e-transaction and protection of consumers such as protection of personal data and business secrets, rule and authentication for business operators of e-transaction
- Promotion of e-transaction and use of e-documents including the establishment of institution promoting e-transaction,

standardization and internalization of e-transaction, survey on statistics of e-transaction

- Designation of Authorized Electronic Documents Depository and its business, effect of vicarious execution of keeping of e-documents, regulations on business of edocuments depository, security and protection of related information such as edocuments and users' information, and responsibility for indemnity.
- Establishment of E-Transaction Mediation Committee (mediation of disputes, operation of committee, etc.)

As shown in figure III.3, a significant number of provisions in this Act, including those related to the definition and authentication of electronic documents as well as the operation of the authorized electronic document repository, are related to the Digital Signature Act.

Figure III.3. Features of the Act on Electronic Transactions



The Digital Signature Act (1999): This Act provides for the following:

- Definition of digital signature, and provisions on the effect of digital signature, issuance/termination/validity of authorized certificate, personal identification by authorized certificate,
- Licensed Certificate Authority (designation, certificate service)
- Security measures (Control of Digital Signature and its Creating Key, Record of Certification, Protection of Information on Individual) as well as Time Stamp of Electronic Messages
- Mutual recognition of digital signatures among licensed CAs, training of human resources and development of techniques, promotion of digital signatures
- Reciprocal recognition (Agreement) of digital signatures with foreign governments

c. Customs Law Provisions for Electronic Trade and Single Window

When Korea Customs Service (KCS) established its automated system, KCS had to amend and update several provisions of the then existing Customs Law in order to enable Customs to work with the automated data in lieu of paper based declarations. The first amendments were on the definition of the “time of acceptance of declaration” and “time of approval of declaration”, because it was a technically important element in deciding the applicable tax rate and exchange rate, and calculation of due date of tax payment.

As mentioned earlier, the issuance of the e-Trade Facilitation Act has had implications for the operations of various agencies, including KCS. Currently, KCS has up-to-date Customs laws and regulations, which consist of the following legislative instruments.⁶¹

Customs Law and Enforcement Decree	Key provisions
Article 226 and Article 233 of Enforcement Decree	<ul style="list-style-type: none"> • Customs authority to check other government agencies (OGA) requirements; and empowering Customs to do it by electronic means
Article 245	<ul style="list-style-type: none"> • Business can be exempted from submitting import/export declarations and supporting documents
Article 254	<ul style="list-style-type: none"> • Special provisions on importing/exporting through e-commerce
Article 255-3	<ul style="list-style-type: none"> • Authorizing Customs to exchange data with other Customs administration
Article 327	<ul style="list-style-type: none"> • Authorizing Commissioner of Customs to operate national SW system • Authorizing Customs to handle import/export declaration with data • Simplified Customs procedures for SW • Time of acceptance and approval • E-delivery of Customs decision
Article 327-2, 327-3, 327-4	<ul style="list-style-type: none"> • Authority of Commissioner of Customs to decide the SW operator • Selection criteria and penalties for the SW operator • Security and liable person • Authority of Commissioner of Customs to set the data and communication standards

⁶¹ For full text of the Korean Customs Law please visit its website at: <http://english.customs.go.kr/kcshome/site/index.do?layoutSiteId=english>

B. Mini-Case Study II: The Legal Framework of the Singapore National Single Window⁶²

a. Operational Background of TradeNet

Singapore's TradeNet was established in 1989 as an electronic data interchange system allowing public and private parties to exchange trade messages and information electronically.⁶³ TradeNet is arguably the world's first electronic B2G filing system for documents related to import and export activities.

The development of TradeNet was led by the Singapore Trade Development Board (STDB), the government agency responsible for trade facilitation and now known as International Enterprise Singapore (IE Singapore), in close collaboration with other governmental authorities involved in international trade transactions.

TradeNet was established as a Public-Private-Partnership (PPP) venture in order to enable Singapore to increase the involvement of the private sector in the delivery of public services aiming to provide an effective and low-cost service.⁶⁴ The decision to assign TradeNet's operations to a private company enabled the government to avoid costly investments in infrastructure and services and the direct costs of running and operating the SW system. The initial costs of establishing the service were an approximate US\$12 million and currently the system is self-sustained by various fees.⁶⁵ In addition, the PPP approach has also enabled CrimsonLogic Pte, the private company operating TradeNet, to develop similar systems in other countries. The company has provided or provides similar services in, e.g., Mauritius, Qatar and Ghana.

Using TradeNet for the exchange of trade messages and information in Singapore became mandatory by late 1991 although more than 95% of the related trade documentation exchanged in Singapore were already handled within the SW by then.⁶⁶ TradeNet currently handles documentation serving over 8000 users who send more than 30,000 declarations daily. Since TradeNet's launch, the processing time per permit has been reduced from 2-7 days to one minute or less.⁶⁷ It is estimated that TradeNet generates an approximate annual savings of US\$1 billion for Singapore's trading environment.⁶⁸

b. The Legal Framework Behind TradeNet

Early development and current situation

The legislative and regulatory development behind TradeNet is unique. As a trailblazer for creating a national SW facility like TradeNet, Singapore was forced to learn mostly from first-hand experiences and to pioneer legal approaches when mitigating the multifaceted legal issues presented when moving from a paper-based system to a paperless environment.

The legislative genesis spans the creation of acts such as the Computer Misuse Act (1993), the Evidence Act (1996), the Electronic Transactions Act (ETA, 1998, amended 2010) and the Customs Act, all of which containing important provisions that enable the seamless operation of TradeNet and other electronic commerce facilities (see Figure III.4). These provisions provide, e.g., authorization for governmental authorities to operate computer services and allow for the submitting and receiving various import/export related documents by electronic means. Additional legislative instruments set forth rules concerning data privacy and confidentiality issues.

⁶² Adapted from UNNEXt Occasional Paper Series, "Assessing the legal framework of Singapore's TradeNet", (2012).

⁶³ Asian Development Bank, "Singapore's TradeNet System", 2005, p. 1.

⁶⁴ Asia-Pacific Economic Cooperation (APEC), (2009), "Evolution of Singapore's Single Window." Single Window Working Group Capacity Building Workshop 4, Singapore, p. 7.

⁶⁵ Sathasivam, K., CrimsonLogic Pte., "The Single Electronic Window –Singapore's TradeNet –Scope of Services And Pricing Model", Singapore 2008, p. 27.

⁶⁶ APEC (2009), p. 33.

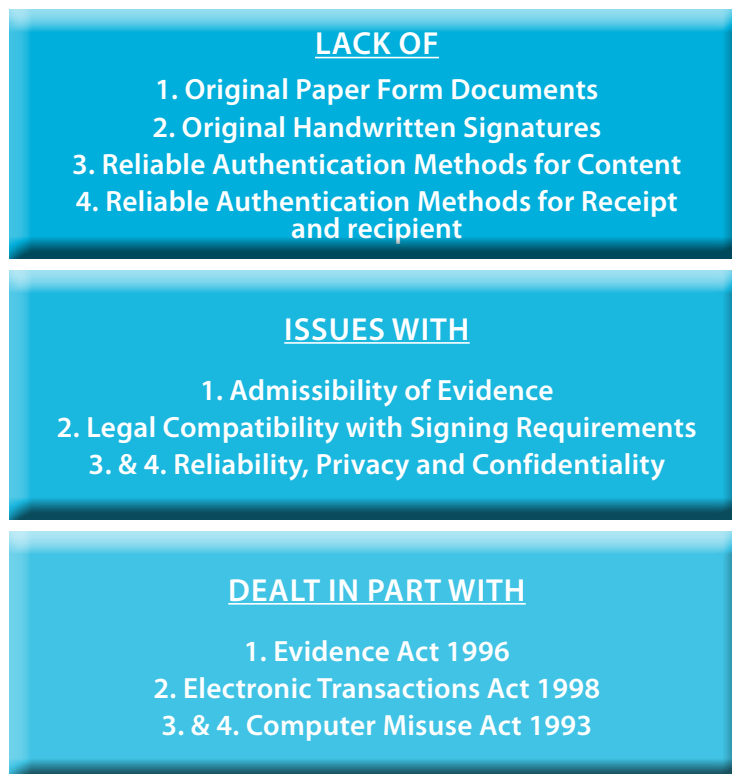
⁶⁷ Koh Tat Sen, Jonathan, CrimsonLogic Pte., "Blazing new trails" (2009), p. 4.

⁶⁸ See CrimsonLogic website: <http://www.crimsonlogic.com/solutionsAndServices/governments/tradeFacilitation/>

Figure III.4. Key legislative instruments supporting TradeNet operation



Figure III.5. Legal issues related to the use of TradeNet



Source: J. Chan Wah Teck, "Legal issues in e-commerce and electronic contracting: the Singapore Position."Asean Law Association. (2009), p.234

The above-mentioned acts form the enabling legal framework for paperless trade in Singapore. They are aimed at addressing various issues that arise from the lack of original paper form documents and handwritten

signatures in electronic transactions, as well as the need for reliable authentication methods for preparing and sending electronic messages (content) and receiving them (see Figure III.5).

The Electronic Transactions Act of Singapore

The Electronic Transactions Act (ETA)⁶⁹ is the de facto backbone of the Singaporean paperless trade framework. The act was first introduced in 1998 and subsequently repealed and re-enacted in 2010. The act is based on the UNCITRAL Model Law on Electronic Commerce and thus it extensively covers the central issues concerning a well-functioning paperless trade environment. Its 2010 amendment allowed for the incorporation at the national level, and for the ratification at the international level, of the ECC. ETA was drafted and implemented as an output of a target-oriented process to develop effective national legislation with full international compatibility.

ETA contains the necessary provisions for the legal recognition of electronic documents as full-fledged equivalents for written documents, which in turn enables TradeNet to function with full regulatory and legislative compliance when dealing with various notifications and declarations. The act also enables the more general e-commerce or paperless trade environment to function by allowing electronic documents to be used interchangeably with traditional paper documents, inherently facilitating the integration of B2G and B2B systems. The ETA also stipulates extensively on the use of electronic signatures (See Box II.3 in this publication).

Singapore has also taken into account the importance of dealing with service provider liability issues within the information society in a very straightforward and innovation-supporting manner. To facilitate the current and future provision of network services, the ETA grants service providers with the immunity against criminal or civil liability in several situations. This immunity in turn lowers the risk and related costs for service providers operating within the electronic commerce environment, such as TradeNet.

SW facilities like TradeNet handle information and documents which often are used not

only for import/export procedure purposes at the moment of processing but also for other purposes, e.g., as a basis for future legal proceedings or enforcement measures. Thus ETA provides for the use of electronic documents for data retention purposes in Section 9. In addition, Section 10 of the ETA has a specific provision on the requirements concerning the originality of electronic documents used.

Whereas data privacy and protection issues are dealt in more detail elsewhere in Singaporean legislation, the ETA does contain provisions in Section 28 which establish a direct obligation of confidentiality concerning electronic records.

c. Concluding Remarks

The Singaporean experience with TradeNet is a testimony to the fact that a proactive approach to trade facilitation by novel means and with a future-oriented attitude can lead to significant benefits for the national economy. Not only has TradeNet facilitated import/export procedures but its establishment has also been an important driver for crucial legal reforms which in turn have formed the enabling legal framework for e-commerce and paperless trade in general.

The standing of Singapore as a world leader in trade facilitation and paperless trade is easily explained by the will – and seemingly limitless capacity – of its government and private sector to innovate and prepare for future challenges (see Box I.2 in this publication). Singapore is actively taking part in the international development of trade facilitation methods and related legislative reforms, not only by using existing international standards, but also by shaping future ones. Singapore has clear intentions to make sure its laws enable the development of new and innovative services,⁷⁰ continuously and proactively searching for ways to clarify and apply e-commerce related legislations.⁷¹

⁶⁹ The statute can be accessed through the Singapore Statutes Online service at <http://statutes.agc.gov.sg/aol/home.w3p>

⁷⁰ UNPAN, "Singapore's Legal and Policy Environment for E-commerce", (2010), p. 1.

⁷¹ See Info-communications Development Authority of Singapore website: <http://www.ida.gov.sg/Policies%20and%20Regulation/20060526123350.aspx>

C. Mini-Case Study III: Legal Gap Analysis Towards a National Single Window in Lao People's Democratic Republic

a. Introduction

The Lao People's Democratic Republic is a member of the ten-nation Association of Southeast Asian Nations (ASEAN). Since at least the mid-2000s, ASEAN and its Member States have been working towards the development of a regional Single Window as an element of their overall economic integration strategy. In 2005, the ASEAN member States signed the ASEAN Single Window Agreement (ASW Agreement)⁷² and in 2006, they entered into the ASEAN Single Window Protocol (ASW Protocol).⁷³

In order to meet its obligations under the ASW Agreement, the Lao People's Democratic Republic has actively engaged in preparations for developing its SW. As part of these preparations, the Lao People's Democratic Republic requested assistance from the ASEAN Secretariat⁷⁴ in developing a legal analysis that focused on identifying potential gaps in the domestic legal framework to be addressed for the full implementation of the Lao People's Democratic Republic SW and its cross-border interoperability in an electronic environment with the ASEAN Single Window. The formal work on this project began in February 2011 and was completed in June 2011.

In addition to its goals with respect to the ASEAN Single Window, the Lao People's Democratic Republic, National ICT Policy recognized that ICT was becoming an increasingly important tool of socio-economic development. The National ICT Policy focuses on advancing Lao People's Democratic

Republic capabilities in the information age and notes, among nine priority areas, the importance of development of an ICT legal framework to achieve its national goals.⁷⁵ The Policy places emphasis on various aspects for electronic commerce development and on the key role that a basic underlying electronic commerce legal framework will play. It is also expected that the legal framework governing e-Commerce and online transactions would be harmonized with international, regional and subregional frameworks.⁷⁶

The legal review and analysis of the legal framework for establishing its SW was based on meetings held with Lao government officials and private sector legal advisors as well as the review of Lao legal materials. The final analysis identified the potential gaps in the Lao legal framework for establishing its SW, particularly those pertaining to the electronic environment in which the Lao People's Democratic Republic SW will operate, as well as those for the underlying legal framework for electronic commerce and transactions.

b. The Legal Framework Analysis

The analysis undertaken focused on determining what legal gaps the Lao People's Democratic Republic might need to address in two areas. First, the research examined the underlying legal framework for electronic transactions and second, it discussed those legal provisions needed to implement the national SW facility. As the country was committed to establishing an electronic SW, it was important to ensure that a solid electronic commerce law foundation was in place.

The research noted that Lao People's Democratic Republic already had some recent legislation that provided for the use of ICT modalities for e-government purposes. For example, the Law on Investment Promotion⁷⁷

⁷² Agreement to Establish and Implement the ASEAN Single Window, Kuala Lumpur, (9 December 2005) available at <http://www.aseansec.org/18006.htm>

⁷³ Protocol to Establish and Implement the ASEAN Single Window, (20 December 2006), available at <http://www.aseansec.org/23084.pdf>; see also, Vientiane Action Programme, (29 November 2004) available at <http://www.aseansec.org/VAP-10th ASEAN Summit.pdf>

⁷⁴ Assistance and support for this effort was provided by the USAID under its ASEAN Single Window Project, which is part of the ADVANCE Program supported by USAID and the U.S. Department of State managed by Nathan Associates Inc

⁷⁵ See, S. Kittingnavong, "ICT Development in Lao", United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), Expert Group Meeting on Regional Cooperation towards Building an Information Society in Asia and the Pacific, 20-22 July 2009, Bangkok, Thailand, available at http://www.unescap.org/idd/events/2009_EGM-WSIS/

⁷⁶ See, S. PHOUYAVONG, "Country Report on Information Access and Media and Information Literacy: LAO" (PPT Presentation), the fifth Asia-Pacific Information Network (APIN) Meeting and ICT Literacy Workshop, 23-26 November 2010 Manila, Philippines

⁷⁷ Law on Investment Promotion, No. 02/NA, Vientiane, 8 July 2009

describes the use of the “one-door-service” for a variety of purposes provided for in the Law. Article 44 of this Law describes the one-door-service, as:

“The investment’s one-door-service is the services which provide the facilities in all fields to the investors through the provision of services on data and information, consideration of the investment, issuance of enterprise registration certificate or concession license and the issuance of notifications relating to the investment.”⁷⁸

In 2010, the Prime Minister of the Lao People’s Democratic Republic signed the Decree on Special Economic Zone and Specific Economic Zones (Lao SEZ Decree).⁷⁹ This Decree, “... defines the principles, regulations, organization, activities, policies relating to the special economic zones and specific economic zones (SEZ), constituting the translation of the implementation of the Law on Investment Promotion...”⁸⁰ For purposes of the One-Door- Service concept, the Lao SEZ Decree contains a specific provision related to the use of ICT in the filing of an application. Article 27 provides that an individual or legal entity may submit an application for investment “on a determined form”. This Article goes on to note that, “the Investor can submit the application for investment via facsimile, electronic mail, or by hand...” [Emphasis added.]

The use of this type of electronic “data message,”⁸¹ that is, an email, has significant implications for the development of an underlying ICT legal framework for the Lao People’s Democratic Republic under any type of one-door-service or SW concept. In the case of the Law on Investment Promotion, for example, the applicant’s submission of “a determined form” has converted that form to an “electronic” version of that paper form.

Also on the electronic commerce side, the Lao People’s Democratic Republic was reviewing a new Electronic Transactions Law. This proposed law appears to be inspired by the UNCITRAL

Model Law on Electronic Commerce and goes beyond the Model Law to include provisions related to e-Government. Regarding basic legal issues, this Law covers a variety of areas including:

- Functional equivalence of paper and electronic documents.
- The use of electronic documents and information as “evidence.”
- Electronic storage and archiving requirements.
- Electronic signatures and certification authorities.
- Web-based transactions.
- The electronic transactions activities of government agencies.
- Contract formation elements including time and place of sending and receiving.
- A list of typical exceptions for certain transactions (e.g., land titles, house and fixed asset ownership certificates, and inheritance matters).

When enacted, this Law would provide the Lao People’s Democratic Republic with a very sound electronic commerce foundation for its SW.

The research also examined those legal areas that were specifically related to legally enabling the Lao People’s Democratic Republic SW. The Checklist of legal issues provided in (Annex II) of UN/CEFACT Recommendation 35 was used as the starting point for the analysis. The issues researched included, among others:

- Legal basis for implementing a Single Window facility
- SW facility structure and organization
- Data protection
- Authority to access and share data between government agencies
- Identification, authentication and authorization

⁷⁸ Id., Section 6 – Investment’s One-Door-Service, Article 44.

⁷⁹ Decree on Special Economic Zone and Specific Economic Zone in Lao PDR.

⁸⁰ Id., Article 1 Objectives.

⁸¹ It should be noted that Article 4(c) of the UN Electronic Communications Convention defines a data message as: “information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or telecopy.”

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- Data quality issues
- Liability issues (obligations and responsibility)
- Arbitration and dispute resolution
- Electronic documents*
- Electronic archiving and data retention*
- Electronic evidence*
- Intellectual property rights and database ownership
- Competition

Note: * Also considered as part of the electronic commerce analysis.

c. Recommendations and On-going Efforts

Based on this legal research, a series of key recommendations or priorities were developed. These included:

1. Implement a national Electronic Transactions Law based on international legal standards;
2. Create the necessary enabling legal infrastructure for the Lao People’s Democratic Republic National Single Window, including:
 - Develop a *Prime Minister Decree to Establish and Operate a National Single Window*
 - Establish a drafting Committee with legal representation from appropriate Ministries
 - Incorporate UN/CEFACT Recommendation 35 principles
 - Accommodate cross-border transactions
 - Provide oversight for the development or modification of those regulations that may be needed to implement the *Decree*;

3. Involve Lao People’s Democratic Republic lawyers and legal experts in the ASW Legal Working Group;
4. Initiate outreach activities within the Lao People’s Democratic Republic legal and business communities regarding the legal framework for the SW;
5. Study the possible benefits to Lao People’s Democratic Republic and the national SW of acceding to the UN Electronic Communications Convention and consider the application of Article 20 of the Convention to other International Agreements to which Lao People’s Democratic Republic is a Contracting Party;
6. Develop a timetable for each task.

Since the final report was presented at a National Workshop in Vientiane, government officials have moved quickly to implement the recommendations in the report. The Lao People’s Democratic Republic draft Electronic Transaction Law is being moved forward towards adoption. A Prime Minister’s Decree has been drafted to authorize and enable the SW and to create the high-level governmental entities that will oversee and manage the development of the SW. A set of principles have been prepared that will guide the development and implementation of the necessary regulatory scheme for the SW. Consultations on the SW with both government and private sector parties throughout the country are underway.

Perhaps one of the most important factors in the progress the Lao People’s Democratic Republic has made in moving its SW forward has been the foresight and commitment of senior government officials. As a result, the Lao People’s Democratic Republic is well on its way towards meeting its commitments to the ASEAN Single Window project and also to achieving its longer-term goals for trade and development.

FURTHER READING

“Lao PDR Single Window Implementation: Legal Requirements, Analysis, and Recommendations, Final Report”, Consultant for USAID ASEAN Single Window Project, which is part of the ADVANCE Program supported by USAID and the U.S. Department of State (2011). Available at <http://advanceiqc.com/uploads/lao-pdr-sw-legal-gap-analysis-final-report.pdf>

D. Mini-Case Study IV: Developing the Viet Nam National Single Window

a. Introduction

Viet Nam is a member of the ten-nation ASEAN. Since at least the mid-2000s, ASEAN and its Member States have been working towards the development of a regional Single Window as an element of their overall economic integration strategy. In 2005, the ASEAN Member States signed the ASW Agreement⁸² and in 2006, they entered into the ASW Protocol.⁸³

b. Master Plan and Roadmap

In order to fulfill its obligations under the ASW Agreement, Viet Nam had worked diligently to develop the organizational framework to effectively engage in preparations for developing the Viet Nam Single Window (VNSW). Under a Prime Minister’s Decree issued in 2008, a National Steering Committee was established, composed of senior government officials, to oversee the VNSW development and implementation efforts. The National Steering Committee appointed a Standing Bureau under the General Department of Customs of Viet Nam for implementation of the Viet Nam NSW project. A Legal Working Group has been set up within the Standing

Bureau to oversee the legal implementation of VNSW.

Viet Nam also requested assistance from the ASEAN Secretariat⁸⁴ in developing the VNSW, including for a legal analysis that focused on identifying potential gaps in the domestic legal framework for the full implementation of the electronic SW and its cross-border interoperability with the ASEAN SW. The formal work on this project began in 2009 with the implementation of an extensive Fact Finding program that sought to assess all aspects of Viet Nam’s trade and regulatory systems and operations that would be related to the VNSW, including all Ministries involved in the import, export and transit of goods as well as port and border operations.

The results of this Fact Finding effort were presented at a VNSW National Workshop in June 2009 in Ha Noi. This Workshop reviewed a proposed VNSW Master Plan that covered 14 different areas, including legal issues.⁸⁵ The proposed VNSW Master Plan Template included a “High-Level Roadmap to Establish a Viet Nam National Single Window” that included key tasks and subtasks correlated with the VNSW Master Plan Template. This Roadmap included specific activities, assigned responsibilities, and the proposed timelines within which the work would be completed. The following Box III.1 shows the major tasks related to the legal aspects of the VNSW Roadmap.

BOX III.1. Viet Nam single window roadmap – legal tasks

Legal Activities

Steering Committee must provide an explicit mandate for the Legal Working Group (LWG) and its work, including:

- Establish requirements (or regulations) that Ministries provide representatives to the LWG;

⁸² Agreement to Establish and Implement the ASEAN Single Window, Kuala Lumpur, (9 December 2005).
⁸³ Protocol to Establish and Implement the ASEAN Single Window, (20 December 2006); see also, Vientiane Action Programme, signed at Vientiane Lao PDR (29 November 2004).
⁸⁴ Assistance and support for this effort was provided by the USAID under its ASEAN Single Window Project, which is part of the ADVANCE Program managed by Nathan Associates Inc
⁸⁵ They included: 1. Concept of Operations; 2.Data Standardization; 3. Data Model; 4. Data Flow Diagrams; 5. User and Functional Requirements; 6. Technology Infrastructure; 7. Technical Reference Model; 8. Cost- Benefit analysis; 9. Project Administration and Long Term Strategy; 10. Configuration Management; 11. Project Implementation and Transition Plan; 12. Training Plan; 13. Communications Plan; 14. Legal Issues.

BOX III.1. (cont.)

- Require that Ministries provide all legal and other relevant information that will be both (1) needed by the LWG to complete its work and (2) that is related to the development of a lawfully operating VNSW;
- Provide the mandate for the LWG to complete its work within the context of the Vision, Mission and Objectives of the VNSW Master Plan;
- Provide the mandate for the LWG to work with the TWG and other groups and sub-groups, Ministries, and Departments to draft regulations (e.g., on information security, the pilot project, and other relevant areas where technology intersects with legal issues) for the VNSW;
- Include provision for LWG participation in outreach activities;
- Provide timetable for the LWG to complete its work.

Develop LWG Workplan

Review existing regulations (including all laws and decrees) that may impact the operation of the VNSW in order to identify possible impediments to operating the VNSW in either the electronic or paperless environments, including:

- Review any international agreements to which Viet Nam is a Contracting Party (e.g., IMO, CMI, IATA, WHO, etc.) that have requirements for “documents” that must be “in writing” and/or “signed” that do not expressly permit that these may be electronic and that may be related to the VNSW;
- Review other Ministry laws, regulations, and/or decrees that may require adjustment in order to fully analyze the needs for domestic legal harmonization to facilitate the operation of the VNSW;
- Review ASEAN Single Window Agreement and Protocol, ASW Steering Committee workplan, ASW LWG workplan, and other relevant ASEAN agreements to ensure the VNSW will be able to lawfully integrate with the ASEAN Single Window;
- Conduct preliminary analysis to determine how all of these laws and decrees will affect the creation and operation of the VN Single Window;
- Review and analyze information above and prepare appropriate recommendations for inclusion in the LWG workplan;
- Study the possible benefits to Viet Nam and the VNSW of ratifying the UN Electronic Communications Convention and consider the application of Article 20 of the Convention to other International Agreements to which VN is a Contracting Party;
- Develop specific recommendations for the Steering Committee to create new laws (possibly including legislation, decrees and/or regulations) and/or to modify existing laws, decrees, and/or regulations to provide the necessary legal infrastructure for the lawful operation of the VNSW;
- Work with all groups involved in the development and management of the VNSW throughout the project on issues that intersect law, technology, and policy;
- Draft revise/new laws/regulations to provide necessary legal infrastructure for operation of the VNSW and joining the ASW;
- Participate actively, involving Viet Nam’s lawyers and legal experts, in the ASW Legal Working Group and ratify the ASW Legal Framework Agreement when finalized;
- Participate in outreach activities.

c. Legal Gap Analysis

Refinement of the legal tasks contained in the Roadmap continued during 2009 along with discussions concerning the undertaking of a formal legal gap analysis for the VNSW. In early 2010, a formal request for proposals was issued for a *Legal Analysis for Implementation of Viet Nam National Single Window*.⁸⁶ This request for proposals described the legal topics that would be included in the legal gap analysis. These legal issues are included in Box III.2.

The request for proposals also described the research methodology that the legal consultants should use in conducting this legal

gap analysis. Given Viet Nam's legal national approach, the consultant was expected to use a standard legal research methodology typical of a highlevel research effort. Thus, the methodology for this research and report was structured as follows:

- Primary legal sources should represent the research focus. These would include enacted legislation, statutes and laws, decrees and executive orders, circulars and the like, etc., having the force of national law, formally adopted and promulgated regulations and rulings, judicial and administrative decisions, etc.

BOX III.2. Research issues for the VNSW legal gap analysis

Electronic transactions legal issues, including:

- Legal issues related to identification and authentication in an electronic transactions environment;
- Legal requirements for electronic documents and messages;
- The need for development of legislation or other regulations dealing with electronic transactions for the SW;
- Policies (executive acts, instructions or documents of similar nature), legislative enactments, administrative rulings, regulations and governmental decrees, circulars and the like that would formally establish the SW in national laws;
- Development of a service level arrangement for the operation of the SW;
- Laws and regulations on data protection and information security;
- Regulatory and/or legal requirements for accessing and sharing information and data between and among government agencies;
- Legal requirements, if any, in national law and regulations, on confidentiality and privacy;
- Laws and regulations relating to data accuracy and integrity for the SW;
- Liability issues related to operations of the SW and, its eventual cross-border transactions;
- Regulatory/legal requirements for data retention and electronic archiving issues;
- Dispute settlement considerations;
- Intellectual property rights and data base ownership issues;
- Cross-border recognition (mutual recognition) of electronic signatures and, where appropriate, certification authorities;
- Legal issues related to jurisdiction in cross-border transactions;
- The use of electronic evidence in, for example, judicial and enforcement proceedings;
- Competition law issues (including treaties and conventions, and GATT requirements that may be applicable to Viet Nam) related to SW;
- An analysis of how international legal standards have been (or have not been) incorporated into Viet Nam's legal framework for its SW;
- Other legal related issues, deemed necessary, to complete the task.

⁸⁶ This RFP was issued by the USAID ADVANCE Program, managed by Nathan Associates, that assists the ASEAN Secretariat and the ASEAN Member-States in the development of the ASEAN Single Window as well as the NSWs of various Member- States. The terms of references for the legal gap analysis was developed through the ASW Working Group on Legal and Regulatory Affairs as a template to be used by ASEAN Member States at the national level.

PART 3: Mini-Case Studies

- Secondary legal sources (e.g., legislative history, ministry, administrative and executive reports), should also be reviewed and included to provide background and interpretations of the primary legal materials.
- References to other legal materials (e.g., law review articles, conference reports, international commentary) may also be included if relevant to the development of the VNSW and related electronic commerce legal framework developments in national law.

d. Legal Gap Analysis Process and Final Report

The contract for the VNSW Legal Gap Analysis was awarded in the late Spring 2010. An intensive 3-day Kick-Off Meeting was conducted in Ha Noi during June 2010. Participants included Viet Nam Customs, the ASEAN Secretariat, USAID representatives from the ADVANCE Program, the ASW Legal Working Group Legal Advisor,⁸⁷ and the consultants⁸⁸ who had been awarded the contract. The meeting participants engaged in an extensive review of the legal issues to be addressed in the gap analysis, the process involved in gathering all of the inputs required for the research and analysis, and the timetable for the Interim and Final Reports.

Following the kick-off meeting, consultants spent considerable time reviewing and analysing all of the legal materials that were identified for the legal gap analysis. An interim report was prepared and presented to the VNSW Legal Working Group. After

additional research and discussions, including information collected from other ministries and private sector, an extensive draft Final Report was prepared and presented to a larger public and private sector audience. Following review by, and feedback from, the VNSW Legal Working Group, the final version of the *Legal Analysis for Implementation of Viet Nam National Single Window* was submitted in May 2011. The consultants noted in the introduction that,

“In performing this gap analysis, we note that Viet Nam has made strong progress in the modernization of its laws for electronic transactions. The law in Viet Nam is substantially harmonized with the UNCITRAL Model Laws of Electronic Commerce and Electronic Signatures, and also the United Nations Convention on the Use of Electronic Communications in International Contracts. What remains to be done is for the Viet Nam government to promulgate legislation that will develop, establish, implement and operate the VNSW, which will be fully authorized and empowered to perform all its functions as a National Single Window. This report provides recommendations to the Viet Nam government on the requirements of such legislation to cover any gaps in the current legal environment.”

Viet Nam has continued to implement the findings of the Report, where necessary, as it completes the work to create a fully operational SW that will be interoperable, both technically and legally, with the ASEAN Single Window and with Single Window facilities outside the region.

FURTHER READING

“Legal Analysis for Implementation of Viet Nam National Single Window”, Nathan Associates inc. USAID ASEAN Single Window Project, which is part of the ADVANCE Program supported by USAID and the U.S. Department of State (2011). Available at <http://advanceiqc.com/uploads/vnsw-legal-gap-analysis-final.pdf>

⁸⁷ The ASW Legal Advisor provided extensive background on the ASW LWG work, international Single Window developments, and overall guidance regarding the legal issues that are essential to the development of a legal framework for a SW and its cross-border interoperability

⁸⁸ The winning bid was submitted by a Singaporean law firm, in partnership with a Vietnamese law firm.